



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32821142

Date: AUG. 13, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a singer, seeks classification as an individual of extraordinary ability. *See* Immigration and National Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner meets the initial evidence requirements for this classification, either through her receipt of a major, internationally recognized award, or, in the alternative, by satisfying at least three of the ten evidentiary criteria set forth in the regulations. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes immigrant visas available to noncitizens who: have extraordinary ability in the sciences, arts, education, business or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; seek to enter the United States to continue work in the area of extraordinary ability; and will substantially benefit the United States upon their entry.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F.Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F.Supp. 2d 1339 (W.D. Wash. 2011).

Here, because the Petitioner has not indicated or established her receipt of a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed she could satisfy seven of the ten criteria, but the Director determined that she met only one, by providing evidence that she has displayed her work at artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner asserts that the Director applied evidentiary requirements that are not found in the plain language of the regulations and disregarded relevant evidence. The Petitioner maintains that the evidence demonstrates that she satisfies the criteria related to receipt of nationally recognized awards, memberships in associations that require outstanding achievements, published materials in major media, judging the work of others, earning a high salary or other significantly high remuneration, and commercial successes in the performing arts. *See* 8 C.F.R. § 204.3(h)(i)-(iv), (ix) and (x).

For the reasons discussed below, we conclude the Petitioner has demonstrated that she meets at least two additional criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and therefore satisfied the initial evidence requirements for the requested classification.

First, to meet the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner must show that she has been the recipient of an award that qualifies as a lesser nationally or internationally recognized prize or award for excellence in her field of endeavor. The record includes evidence that she received a Best Singer Award from the [REDACTED] in 2021. Evidence of her receipt of the award is supported by statements from the awarding entity, information regarding the purpose and history of the award, and evidence of media coverage received by the Petitioner and other winners of awards from this organization, not all of which was weighed in the Director's decision. Considered in its totality, we conclude that the Petitioner met her burden to demonstrate, by a preponderance of the evidence, that this award qualifies as a nationally recognized award for excellence in the Petitioner's field in Bangladesh and meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i).

Further, to meet the criterion at 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner must provide published material about her in professional or major trade publications or other major media. Such evidence must include the title, date and author of the material, and any necessary translation. In evaluating whether a publication is a professional publication, major trade publication, or other major media, relevant factors include the intended audience and the relative circulation, readership, or viewership. *See* 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual> (discussing evaluation of initial evidence of extraordinary ability under the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

The Director concluded that, although the Petitioner submitted published newspaper articles about her and her work as a singer, she did not submit sufficient evidence to support her claim that the articles were published in major media. The Director acknowledged the Petitioner submitted several sources of information regarding Bangladeshi daily newspapers but found each source to be inadequate either due to a lack of an English translation that was fully compliant with the regulation at 8 C.F.R. § 103.2(b)(3), or because the sources ranked publications without providing specific circulation or readership numbers. On appeal, the Petitioner submits a certificate of translation for a document issued by the Government of Bangladesh, Directorate of Film and Publications Audit Branch, which lists the circulation figures for both Bengali language and English language daily newspapers as of June 2018.¹ In addition, she emphasizes that the previously submitted translation was substantially compliant with 8 C.F.R. § 103.2(b)(3) and notes she also provided other credible rankings of publications based on their relative circulation, including an article published by the BBC and a scholarly article about Bangladeshi newspapers published in a reputable academic journal.

The Petitioner has provided relevant and credible evidence in support of her claim that some of the submitted articles were published in daily newspapers that qualify as major media in Bangladesh and otherwise meet the requirements of the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i). She is not required to demonstrate that every submitted article satisfies the criterion.

With eligibility established under these two additional criteria, the Petitioner satisfied part one of the two-step adjudicative process described in *Kazarian* and has overcome the sole basis for the denial of her petition. Accordingly, we will withdraw the Director's decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x).

However, granting three initial criteria does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition. USCIS must now determine whether the record establishes the sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of her field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The Director did not reach that finding, and we decline to make the final merits determination in the first instance. We will therefore remand the matter.

On remand, the Director should evaluate the evidence and consider the petition in its entirety to make a final merits determination. The final merits determination should weigh the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), any other relevant evidence in the record, and the Petitioner's claims and evidence on appeal.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ The Director emphasized in the decision that the information in this document is outdated and therefore lacks probative value. However, the record reflects that the Petitioner submitted newspaper articles about her that were published in 2018.